Board for an increase. Nor was there any evidence that the tenancy was determined before the rent was increased. It was admitted by counsel for the plaintiff that this increase was not lawful.

In December 1953 the rent was still further increased by 10% from $90 per month to $99 per month, owing it was alleged, to an increase in the rates payable by the plaintiff. In thus increasing the rent it is obvious that the plaintiff took into account the two previous increases which brought the rent up to $90 per month. It follows that the rent could not be lawfully increased any further without the approval of the Rent Conciliation Board under the proviso to section 7(1)(e) of the Control of Rent Ordinance. Further, there was no evidence that the tenancy was determined before the rent was increased. It is plain that all the three increases in the rent were not lawful. The defendants therefore succeed in their counterclaim and there will be judgment for the defendants for the sum of $2,125.50.

The plaintiff will pay the defendants' costs of the claim and counterclaim on the High Court scale.

Suit dismissed. Judgment for defendant on counterclaim.

Solicitors: *R. C. H. Lim & Co.; Eber & Tan.*

LEE YONG WU v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) April 28, 1962]

[Muar — Criminal Appeal No. 5 of 1962]

Gaming — Assisting in carrying on public lottery — Modus operandi of Tikam Ekor Lottery — Expert evidence — Common Gaming Houses Ordinance, 1953, ss.4, 16, 18, 24.

Evidence Ordinance, 1950, s.114(e) — Presumption of due performance of official acts.

Sentence — When sentence of imprisonment should be imposed instead of fine.

The appellant was charged under section 4(1) of the Common Gaming Houses Ordinance, and sentenced to 6 months' imprisonment. It was contended on appeal that: (a) there was no evidence that the search warrant was issued in accordance with the provisions of section 16, and (b) the Magistrate did not himself look at the exhibits to make up his own mind as to whether the explanation of the expert as to their nature was reasonable and acceptable.

Held: (1) A.S.P. Lim's evidence showed that he issued the warrant under section 16(1), and it was eminently reasonable to presume that being a responsible officer he had due regard to all provisions of the law because not only did he depose that he issued the search warrant on information on oath, but he took steps to satisfy himself that the information was true;

(2) the normal procedure in any Court is for the exhibit to be proved, for the Judge to look at it and then to make up his mind concerning its relevance. There is nothing to suggest that the learned President who has had plenty of experience did not do so.

Cases referred to:—

(1) *Ong Yap Chang* v. *Public Prosecutor* [1962] M.L.J. 46 at p. 47.

(2) *Abdul Kareem* v. *R.* [1957] M.L.J. 185 at p. 188.

(3) *Re Lim Kwang Teik & Ors.* [1954] M.L.J. 159.

MAGISTRATE'S CRIMINAL APPEAL.

W. H. Sault for the appellant.

Hamzah bin Abu Samah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Adams J.: The appellant in this case was charged before the learned President of the Sessions Court sitting as Magistrate at Muar with the offence of assisting in the carrying on of a public lottery contrary to section 4(1) of the Common Gaming Houses Ordinance No. 26 of 1953. He was found guilty and sentenced to six months imprisonment.

The learned President found that the police, in pursuance to a search warrant issued under the provisions of section 16 of the Ordinance an unnumbered house in Jalan Mahmood, Parit Jawa New Village, was raided. During the raid the appellant was seen to get up from a table on which various exhibits were later found and make a bolt for it throwing away further exhibits as he went. Inspector Tharunalinggam gave evidence as an expert on the *modus operandi* of the *Tikam Ekor* Lottery and deposed that the exhibits produced to the Court were record of stakes of tickets of various denominations in the *Tikam Ekor* Lottery. He calculated the value of the tickets found in the record of stakes in the possession of the accused as $4,900. Inspector Tharunalinggam explained how he came by his opinions and pointed out the similarity and dissimilarity to the exhibits produced in the case to those shown in *Gambling Games in Malaya* by Dobree which is a statutory authority under section 24(2) of the Common Gaming Houses Ordinance.

Mr. Sault who appeared for the appellant, did not really attack the findings of fact of the learned President and argued the appeal on two points of law. It will be easier if I deal with his second point first. In his very full and careful grounds the learned President makes certain findings of fact against the appellant and one of these was that the exhibits were records of stakes in the 10,000 character lottery; and he says:

> "I found as a fact that the exhibits were records of stakes in 10,000 character lottery because from the evidence of this expert it was clear that the reasons that he gave for saying so were clear and unequivocal and no one could quarrel with him. The exhibits were identical to those used in other cases relating to the carrying on of 10,000 character lottery that have been previously produced before the Courts in North Johore and this confirmed me in my opinion that the evidence of the expert was reliable."

The first part of this is taken from a judgment of mine in *Ong Yap Chang* v. *Public Prosecutor*[1]. In my opinion this extract presupposes that the Magistrate has looked at the exhibits. The normal procedure in any Court is for the exhibit to be proved, for the Judge to look at it, and then to make up his mind concerning its relevance. There is nothing to suggest that the learned President who has had plenty of experience did not also do so. He could not have written that he found the exhibits to be what

they were without having looked at them in the light of the expert's evidence. It is therefore clear that the learned President looked at the exhibits and found as a fact that they were what they were because he was satisfied that the reasons given by the expert were eminently reasonable and excluded the possibility of the exhibits being anything else other than what Inspector Tharunalinggam said they were. This ground of appeal, therefore, fails.

The other ground of appeal argued is that A.S.P. Lim's evidence as to the issue of the search warrant P.1 shows that the provisions of section 16 were not complied with. Sub-section (1) of section 16 reads as follows:

"A Magistrate or Justice of the Peace or Senior Police Officer on being satisfied upon written information on oath and after any enquiry which he may think necessary that there is good reason to believe that any place is kept or used as a common gaming house may by warrant authorise any person therein named or any police officer with such assistance and by such force as may be necessary by night or by day to enter or go to such place and to search the same and all persons found therein and to seize all instruments or appliances for gaming and all money, securities for money, and other articles reasonably supposed to have been used or intended to be used for any game or lottery which may be found in such place or on any such persons and also to detain all such persons until they and the said place shall have been searched. If any of the things or circumstances which are made by this Ordinance presumptive evidence of guilt are found in such place or on any person therein, every person found therein shall be taken before a Magistrate to be dealt with according to law."

On this matter A.S.P. Lim gave evidence as follows:

"On 12.11.61 I issued a search W/T under section 16(1) of C.G.H. Ord. — P1 identified. I issued search W/T on information on oath. Before issuing the W/T I was satisfied the information given to me on oath was true."

Sub-section (1) of section 16 requires two things as a condition precedent to the issue of a search warrant under the powers conferred by it, the first is that there must be written information on oath, and secondly that the officer issuing must have, after any enquiry which he may deem necessary, good reason to believe that a place is being used as a Common Gaming House. The search warrant itself Exhibit P.1 recites in its preamble as follows:—

"WHEREAS I am satisfied upon written information on oath and after due enquiry that there is good reason to believe that an unnumbered house in Jalan Mahmood, Pt. Jawa is kept or used as a common gaming house;"

Mr. Sault argued that this was not sufficient to show that the information on oath was in fact in writing, and if that were so, then the irregularity would render the warrant null and void, and it would follow that the presumptions contained in the section would not arise.

I must confess that were it not for the judgment of Shepherd J. in the case of *Abdul Kareem* v. *R.*[2] I would not have considered the point to have any substance, especially in the light of the judgment of Spencer Wilkinson J. on a similar point under section 18 in *Re Lim Kwang Teik & Ors.*[3]. I would have said that A.S.P. Lim's evidence read with the warrant P.1 and section 114(e) of the Evidence Ordinance which imports into our law the maxim *omnia praesumuntur rite esse acta* was sufficient, indeed the learned Judge himself says 'I see no reason why the presumption referred to in Illustration (e) of section 114 of the Evidence Ordinance should not be applied in proper cases where the due performance of any official act is called in question'. But when he comes to deal with the question of the issue of the warrant he apparently was of the opinion that the recital in the preamble to the warrant was not of itself sufficient when read with the evidence of the officer who issued it, and read with section 114(e) of the Evidence Ordinance to raise a presumption that it was on oath, but the learned Judge does not say why he is not prepared to call in aid section 114 of the Evidence Ordinance, and with great respect to him, I feel that I prefer to follow the judgment of Spenser Wilkinson J. in *Re Lim Kwang Teik & Ors.* Indeed it is only logical. The record contains the Magistrate's notes of evidence. They are notes, and not a verbatim record of the evidence given. Mr. Lim's evidence shows that he issued the warrant under the provisions of section 16(1). Is it not therefore eminently reasonable to presume that being a responsible police officer, he had due regard to all the provisions of law? I think that the answer must undoubtedly be in the affirmative. It must quite definitely be so in this case because not only does he depose that he issued the search warrant on information on oath, but he took steps to satisfy himself that the information was true. In my view once the record shows that broadly speaking provisions of the law have been complied with in general, the Court is entitled to presume that the details were properly performed. This ground of appeal also fails and the conviction must be affirmed.

It now falls to consider the question of sentence. The accused had one previous conviction for a similar offence on the 11th August, 1959 when he was fined $2,500. He paid the fine. The learned President in considering the sentence has considered in my opinion all the things that he ought to consider. He concedes that the offence is not *mala per se* and in imposing the sentence he says that he was guided by the judgment of Thomson, J. (as he then was) in Criminal Appeal No. 136 of 1953. In addition to this the police produced and submitted to the Magistrate a certified list compiled from the Court records of prosecutions for the "Tikam Ekor" lottery in the Muar Magistrate's Court in 1961. This is an astonishing document. These amounted to 35 in number and it is quite astounding to read down the list of fines. There are 16 cases in which fines of more than $1,000 and not exceeding $5,000 have been imposed and out of those cases only in six cases were the fines unpaid. In one case where

an accused person was fined a total of $5,500 on two charges the fine was paid at once and in another case where a fine of $5,000 was imposed the fine was also paid forthwith. The total fines imposed last year amounted to $75,300. Of that huge sum only $19,500 was not paid and sentences of imprisonment of 28 months were served in lieu. It would seem to me, therefore, that there is ample evidence here of a huge gambling network. Large fines have been imposed and do not seem to have the slightest effect. It would seem to me that the only answer in cases of this nature where the accused was clearly shown to be an operator on a large scale and in addition has been previously convicted is to impose a prison sentence. The appeal, therefore, of the accused against conviction must be dismissed as also the appeal against sentence.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.*

KOH PENG MOH v. TAN CHWEE BOON

[O. C. J. (Tan Ah Tah J.) May 29, 1962]

[Singapore — Suit No. 789 of 1961]

Land Laws — Sale of land — "Subject to Contract" — Duplicate contract — Refusal of vendor to sign — No concluded contract — Claim for specific performance.

On May 8, 1961 in consideration of $500 the defendant granted to one HYK an option in writing to sell certain lands at Tanah Merah Kechil and Upper Bedok at the price of $79,000. On May 9, 1961 the plaintiff's solicitors wrote to the defendant to the effect that HYK had found a purchaser for the properties in question subject to contract. The letter also requested for the title deeds as the plaintiff's solicitors were acting for the intending purchaser. The defendant's solicitors wrote to the plaintiff's solicitors on May 17, 1961 enclosing the draft contract (in duplicate) and the title deed requesting the plaintiff's solicitors to treat the draft contract as fair copies for signature by their clients if they had no substantial amendment to make. On June 13, 1961 the plaintiff's solicitors wrote to the defendant's solicitors enclosing the schedule of deeds, and contract duly signed by the plaintiff together with a cheque for $7,900 being the 10% deposit money on the undertaking of the defendant to sign and return one copy of the contract to the plaintiff's solicitors. The defendant did not sign the contract. The defendant's solicitors wrote to the plaintiff's solicitors on June 14, 1961 returning the cheque for $7,900 and informing them that the defendant did not wish to sell the properties to the plaintiff. The letter further requested the return of the title deeds. Subsequently after further correspondence between the solicitors, the title deeds were returned to the defendant's solicitors. In this action the plaintiff claimed specific performance of the contract alleged to have been entered into by the defendant with the plaintiff.

Held: in Singapore when an offer to sell land is accepted "subject to contract" there are various methods whereby the parties could enter into a binding contract. As the defendant did not sign either of the 2 copies of the contract, an essential part of the method adopted was omitted in this case and there was no concluded contract between the parties.

Cases referred to:—

(1) *Eccles* v. *Bryant* [1947] 2 All E.R. 865.

(2) *Leeman* v. *Stocks* [1951] 1 All E.R. 1043.

ACTION.

L. A. J. Smith (*R. E. Redrup* with him) for the plaintiff.

R. C. H. Lim (*Yap Bor Choon* with him) for the respondent.

Cur. Adv. Vult.

Tan Ah Tah J.: In this action the plaintiff claims specific performance of a contract alleged to have been entered into by the defendant with the plaintiff for the sale to the plaintiff of certain lands situate at Tanah Merah Kechil and Upper Bedok.

The facts of the case are not in dispute. On the 8th May 1961, in consideration of the sum of $500 paid to him by one Heng Yong Khiang, the defendant granted to Heng Yong Khiang an option in writing to sell the property in question at the price of $79,000.

On the 9th May 1961 Messrs. Osborne-Jones & Co., who are the solicitors for the plaintiff, wrote to the defendant as follows:

> Your option dated 8th May, 1961 given to Mr. Heng Yong Khiang has been placed in our hands with instructions to inform you that he has found a purchaser for the same subject to contract at the price of $79,000 (Dollars Seventy-nine thousand).
>
> As we have instructions to act for the intending purchaser will you please forward us the deeds together with draft contract.

On the 17th May 1961 Messrs. Richard Chuan Hoe Lim & Co. sent a reply to Messrs. Osborne-Jones & Co. in the following terms:

> We act for Mr. Tan Chwee Boon who has handed to us your letter of the 9th instant addressed to him.
>
> We send you herewith title deeds relating to the above property on the usual undertaking together with draft contract, in duplicate, for approval. Kindly sign and return to us one copy of the enclosed Schedule of Deeds.
>
> If you have no substantial amendment to make to the draft contract please treat the same as fair copies for signature by your client.

On the 13th June 1961, after receiving a reminder dated 23rd May 1961, Messrs. Osborne-Jones & Co. wrote the following letter to Messrs. Richard Chuan Hoe Lim & Co.:

> With reference to your letter of the 23rd *ultimo*, we return herewith a copy of the schedule of deeds signed by us.
>
> We also return herewith the contract which has been signed by the purchaser. Our cheque for $7,900 representing the 10% deposit is enclosed herewith on your undertaking to return to us one copy of the said contract duly signed by the vendor.
>
> The delay in replying is due to our waiting for replies to our requisitions to the authorities.

The defendant did not sign the contract, having changed his mind about selling the property to the plaintiff, and on the 14th June 1961, Messrs. Richard Chuan Hoe Lim & Co. wrote to Messrs. Osborne-Jones & Co. in the following terms:

> Referring to your letter of the 13th instant, we are instructed by our client to and we do hereby return your cheque for $7,900 as our client does not wish to sell the property to your client. Will you, therefore, kindly return the title deeds to us.